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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,114	12/15/2003	Gerard J. Tate		3648
45096	7590	12/27/2005	EXAMINER	
STEVEN HOROWITZ, ESQ. 295 MADISON AVE SUITE 700 NEW YORK, NY 10017			LAVINDER, JACK W	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/736,114	TATE, GERARD J.
	Examiner	Art Unit
	Jack W. Lavinder	3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 October 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-11,13,14 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-11,13,14 and 17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9, 10, 11, 13, 14 and 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Fortune, 5214826 in view of Collins, 3217371.

Regarding claim 9, Fortune discloses a fastener assembly for use with footwear (abstract) comprising a series of fastener elements (figure 15) wherein each fastener element comprises

- A first mating member having two curved stop ends (20) and an elastomeric member (46) having two ends positioned between the two curved stop ends
- Each curved stop end having a vertical cavity (24, figure 4) with spaces for receipt of the first and second enlarged diameter areas of the vertical post (38)
- Two second mating members (figure 10) comprising a vertical post having a flange (40), a first area of enlarged diameter (see top portion of post 38), and a second area of enlarged diameter (portion located between sections 42 and 44)

The shape of the first and second enlarged diameter areas are considered to read on the limitations defined in the last paragraph of claim 1, i.e., they are shaped for an adult

to easily push the post into the cavities and are difficult for a young child to remove the post from the vertical cavity.

Fortune fails to disclose a curved end stop and fails to disclose a proximal end of the stop end having a hollow lateral cavity to receive an end of the elastomeric member. Fortune discloses a flat top surface and the reverse attachment between the elastomeric member (46) and the end stops (20), i.e., the elastomeric member has a cylindrical cavity that receives a cylindrical stud (26) to secure the end stop to the elastomeric member. Applicant's invention has the reversed attachment means, i.e., the cylindrical cavity is located on the end stop and the cylindrical stud on the elastomeric means.

Collins discloses a curved top surface (80) on an end stop and a cavity (72, 74) for receiving an elastomeric member (60, figures 1-3). This type of attachment between the end stop and the elastomeric member is considered to be a design equivalent of Fortune's attaching arrangement. Both attaching arrangements perform the same function of attaching the end stop to the elastomeric member equally as well as the other. Furthermore, the specification fails to disclose any criticality associated with the claimed attaching arrangement.

It would have been an obvious design choice to a person having ordinary skill in the art to modify Fortune's attaching arrangement to have the cavity located on the end stop for the reasons indicated above. Furthermore, to make Fortune's top surface of the end stop in the shape of a curve would have been obvious to a person having

ordinary skill in the art in order to improve the aesthetical appearance of the end stop in view of the teachings in Collins.

Regarding claim 10, Fortune discloses cylindrical shaped posts (figure 7).

Regarding claim 11, Fortune discloses a lateral extent that has a cylindrical shape.

Regarding claims 13 and 14, Fortune discloses that the elastomeric member and the end stops can be made in any color, preferably neon colors (col. 4, lines 38-41, col. 7, lines 58-61).

Regarding claim 17, Fortune in view of Collins discloses a curved smooth top surface comprising a concave shape at the distal end (left side of 80 in figure 1) and a sloping curve towards the proximal end (right side of figure 1 at 88).

### ***Response to Arguments***

3. Applicant's arguments filed 10/27/05 have been fully considered but they are not persuasive. The applicant argues that Fortune teaches away from the teachings in Collins and that these two references are not combinable. Both references are directed to a fastener for replacing a shoelace. They both are in the same field of endeavor and are solving the same problem. Therefore, the references are considered to be combinable and applicable toward each other.

The applicant states that Fortune teaches that Collins is more complex and costly to make, and therefore teaches away from Fortune's device. Even so, Collins still teaches using a curved top surface and a lateral cavity for receiving the elastic

member. Nothing in Fortune teaches away from these two aspects of the invention. Therefore, Fortune and Collins are considered to be combinable.

The applicant argues that the combination of Fortune and Collins lacks a large visible surface area, which can be decorated. Fortune discloses a large visible surface area (22) and Collins discloses a large visible surface area (80), which can be decorated.

The applicant argues that Collins fails to disclose making the entire top surface in the form of a curved surface. Collins clearly shows the entire top surface of element 80 having a curved smooth top surface from the distal end (left side of figure 1) to the proximal end (right side of figure 1).

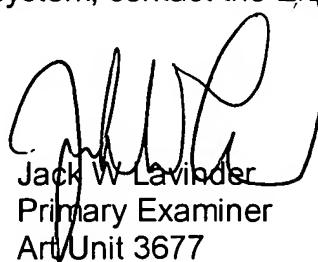
#### ***Comments on Allowable Subject Matter***

The examiner would like to direct the applicant to claiming the structures within the cavity of the end stop, i.e., the layers 31 and 32. This structure appears to be allowable over the art of record. An amendment including the structure of the layers (31, 32) including the detailed structure of the post's (42) enlarged sections (44, 46), i.e. the shape which allows smooth insertion and difficult removal, would put the case in condition for allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W. Lavinder  
Primary Examiner  
Art Unit 3677

12/19/05